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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

MITZIE PEREZ and SERGIO BARAJAS,
individually, and ANDRES ACOSTA,
TERESA DIAZ VEDROY, VICTORIA
RODAS, and SAMUEL TABARES
VILLAFUERTE, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

WELLS FARGO BANK, N.A.,

Defendant.

Case No. 17-cv-00454-MMC

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY SETTLEMENT APPROVAL
ORDER**

Judge: Maxine M. Chesney
Hearing Date: July 10, 2020
Hearing Time: 9:00 a.m.
Courtroom: 7, 19th floor

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on July 10, 2020, at 9:00 a.m., or as soon thereafter as the matter may be heard, in Courtroom 7 on the 19th floor of this Court's San Francisco Courthouse, located at 450 Golden Gate Avenue in San Francisco, California, Plaintiffs Mitzie Perez and Sergio Barajas, individually, and Plaintiffs Victoria Rodas, Samuel Tabares Villafuerte, Teresa Diaz Vedoy, and Andres Acosta, individually and as class representatives on behalf of the Class, will, and hereby do, move this Court for the following relief with respect to the Settlement Agreement and Release (attached as Exhibit A to the Declaration of Ossai Miazad in Support of Motion for Preliminary Settlement Approval Order) with Defendant Wells Fargo Bank, N.A.:

1. that the Court certify, for settlement purposes only, settlement classes pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3);
2. that the Court appoint Plaintiffs Rodas, Villafuerte, Vedoy, and Acosta as representatives of the Class;
3. that the Court appoint Plaintiffs' attorneys as Class Counsel;
4. that the Court grant preliminary approval of the Settlement;
5. that the Court approve mailing to the Class Members the proposed Class Notice;
6. that the Court appoint JND Legal Administration Co. as the Settlement Administrator; and
7. that the Court schedule a hearing for final approval of the Settlement.

This Motion is made on the grounds that the Settlement is the product of arms-length, good-faith negotiations; is fair, reasonable, and adequate to the Class; and should be preliminarily approved, as discussed in the attached memorandum.

The Motion is based on: this notice; the following memorandum in support of the motion, the Miazad declaration and attached Settlement Agreement, the Helzer declaration, the Court's record of this action; all matters of which the Court may take notice; and oral and documentary evidence presented at the hearing on the motion. This motion is unopposed by Wells Fargo.

1 Dated: June 16, 2020

Respectfully submitted,

2 By: /s/ Ossai Miazad
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MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION

I. INTRODUCTION

Plaintiffs, five individuals who have lived in California and one who has lived in Texas since they were children, were each granted temporary protection from deportation, federal work authorization, and Social Security numbers under the June 2012 program known as Deferred Action for Childhood Arrivals (“DACA”). After obtaining DACA, work authorization, and SSNs, Plaintiffs applied to Wells Fargo for a variety of consumer and small business loans and credit cards. Plaintiffs allege that Wells Fargo denied their applications for credit because they were not U.S. citizens or lawful permanent residents (“LPRs”). Plaintiffs then, in January 2017, brought a class action lawsuit against Wells Fargo, alleging lending discrimination based on alienage and immigration status. The parties have now entered into a proposed settlement of this litigation for significant monetary and programmatic relief. In connection with the settlement, Wells Fargo will change its lending policies to make credit and loans available to DACA recipients on the same terms and conditions as it offers credit to U.S. citizens, fully eliminating the harm challenged by the lawsuit. The settlement also provides for monetary relief totaling \$18.7 million, comprised of cash payments of at least \$4,750,000 that could increase to as much as \$13,100,000 to class members who submit valid claim forms, as well as \$450,000 in administration costs, \$150,000 in service awards for four class representatives and two individual plaintiffs, and \$5,000,000 in fees and costs. *See* Ex. A (Settlement Agreement or SA) §§ 3.3.1; 3.3.4; 3.37; 15.1; 15.2.¹

For the reasons set forth below, the proposed Settlement and this Motion readily satisfy the requirements of Rule 23, Ninth Circuit precedent, *see, e.g., Roes, 1-2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1060 (9th Cir. 2019), and established Northern District practice, including the Class Action Settlement Guidance. *Procedural Guidance for Class Action Settlements*, U.S. Dist. Ct. for Northern District Cal., <https://www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements/> (last updated Dec. 5, 2018). The parties have zealously litigated the

¹ All exhibits are attached to the accompanying Declaration of Ossai Miazad in Support of Motion for Preliminary Settlement Approval Order (“Miazad Decl.”)

complex class certification and liability issues presented by this case, briefing numerous motions to dismiss and strike, engaging in extensive fact and expert discovery, and participating in three in-person mediation sessions and dozens of phone conferences since June 2018, each supervised by Hunter R. Hughes, one of the leading national mediators of complex discrimination class actions. Plaintiffs accordingly and respectfully submit that the Court should preliminarily approve this exceptional settlement, and notice should issue to Class Members to let them make claims, object, or opt out, as appropriate.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Wells Fargo's Lending Policies Made DACA Recipients Ineligible for Credit.

DACA, announced by President Obama on June 15, 2012, and promulgated through the Department of Homeland Security, allows non-citizens who entered the United States as children and who meet certain requirements to apply for work authorization and relief from deportation proceedings.² DACA was promulgated to provide opportunities to young people who came to the United States as children and “who want to staff our labs, or start new businesses, or defend our country.”³ Its motivating principle was to strengthen its recipients’ ability to actively participate in the American economy and contribute to civic life.⁴ In addition to work authorization, DACA recipients are eligible to apply for and receive SSNs, enabling them to identify themselves for employment and other contractual purposes.⁵

There is no federal or state law or regulation that prohibits banks from lending to non-citizens generally, or DACA recipients specifically, based on their status as non-citizens. Wells Fargo, however, maintained lending policies that made DACA recipients facially ineligible for

² Remarks on Immigration Reform and Exchange With Reporters, 2012 Daily Comp. Pres. Doc. 201200483 (June 15, 2012), <https://www.govinfo.gov/content/pkg/DCPD-201200483/html/DCPD-201200483.htm>. See generally Memorandum from Janet Napolitano, Sec’y of Homeland Sec., on Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012), <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

³ Obama, *supra* note 2.

⁴ *Id.*

⁵ Fact Sheet, Social Security Number and Card – Deferred Action for Childhood Arrivals, https://www.ssa.gov/pubs/deferred_action.pdf.

1 five different types of loans or credit under four different lines of business (“LOBs”): (1)
 2 unsecured student loans, offered by Educational Financial Services (“EFS”); (2) unsecured credit
 3 cards and (3) unsecured personal loans, offered by Consumer Financial Services (“CFS”); (4)
 4 both secured and unsecured small business loans and credit cards, offered by Business Direct
 5 (now called Small Business Lending); and (5) home mortgages, offered by Home Mortgage.

6 Plaintiffs are all DACA recipients living in the United States with valid SSNs who were
 7 denied the opportunity to be considered for credit from Wells Fargo, pursuant to the lending
 8 policies described above, because they were not U.S. citizens or LPRs (or, in the case of EFS,
 9 because they also did not have student visas). Plaintiffs Mitzie Perez and Sergio Barajas,
 10 residents of California (jointly, “Individual Plaintiffs”), bring claims individually. Plaintiffs
 11 Victoria Rodas, Samuel Tabares Villafuerte, and Teresa Diaz Vedoy, residents of California, and
 12 Andres Acosta, resident of Texas (jointly, “Class Representatives”), are proposed class
 13 representatives on behalf of one or more classes.

14 **B. Procedural History**

15 On January 30, 2017, Plaintiff Perez and the California League of United Latin American
 16 Citizens (“LULAC”) filed a putative class action complaint against Wells Fargo Bank, N.A. and
 17 Wells Fargo & Co., with Plaintiff Perez seeking to represent all persons within the jurisdiction of
 18 the United States who were denied the right to contract for a loan or other financial product by
 19 Wells Fargo because they were not U.S. citizens. ECF No. 1. During this litigation, Plaintiffs
 20 amended their complaint four times, dismissed Wells Fargo & Co. as a defendant, added five
 21 additional individual plaintiffs, dismissed LULAC as a named plaintiff, briefed four motions to
 22 dismiss or strike, and narrowed their claims, including withdrawing a California Unfair
 23 Competition Law claim and narrowing their damages theories. ECF Nos. 37, 72, 155, 203, 267.

24 Plaintiffs filed their operative complaint in this action, the Fifth Amended Complaint
 25 (“5AC”), on July 15, 2019. ECF No. 267. In the 5AC, Plaintiffs Perez, Acosta, Barajas, Diaz
 26 Vedoy, Rodas, and Tabares Villafuerte assert claims of alienage discrimination under 42 U.S.C.
 27 § 1981 and immigration status and alienage discrimination under the California Unruh Civil
 28 Rights Act, Cal. Civil Code §§ 51 and 52 *et seq.* *Id.* ¶¶ 96-118. Plaintiffs sought to represent

1 three nationwide classes and two California sub-classes of non-U.S. citizens who resided in the
 2 United States and held DACA at the time they applied for certain credit products from Wells
 3 Fargo and were denied those products pursuant to certain internal Wells Fargo denial codes. *Id.*
 4 ¶¶ 78-79.

5 The parties have engaged in extensive discovery since August 2017, including discovery
 6 of (a) emails and other electronic communications; (b) Wells Fargo’s lending, underwriting, and
 7 credit risk policies, procedures, and processes; and (c) Plaintiffs’ applications with Wells Fargo,
 8 credit reports and credit information, and applications with other banks. Miazad Decl. ¶ 14. The
 9 parties exchanged over five rounds of written discovery, including document requests, requests
 10 for admissions, and interrogatories, and raised 12 discovery disputes with Magistrate Judge
 11 Laporte. *Id.* ¶ 13; *see also, e.g.*, ECF Nos. 247, 248, 279. In total, Wells Fargo produced
 12 approximately 58,783 pages of documents and Plaintiffs produced approximately 10,179 pages of
 13 documents. *Id.* ¶ 15. Wells Fargo deposed all six Plaintiffs, and Plaintiffs deposed six fact and
 14 corporate witnesses. *Id.* ¶ 16. In addition, the parties each retained three testifying experts—
 15 including consumer credit/finance and immigration law professors and practitioners—who
 16 prepared expert reports and sat for depositions. *Id.* ¶ 17. The parties conducted in-person
 17 mediation sessions with Mr. Hughes on June 19, 2018 and June 19, 2019 but were unable to make
 18 sufficient progress towards a resolution. *Id.* ¶¶ 20-21.

19 In November 2019, Plaintiffs filed a Motion for Class Certification, seeking to certify the
 20 following classes: (i) all DACA residents during the covered period⁶ who applied or will apply
 21 for a Wells Fargo student loan and were declined or will be declined under decline code “d01”
 22 (“EFS class”); (ii) all DACA residents who applied or will apply for an unsecured credit card and
 23 were declined under decline codes “1409” or “1614,” or for an unsecured personal loan and were
 24 declined or will be declined under decline code “34N,” or, between January 30, 2015 and
 25 February 13, 2015 only, decline code “321” (“CFS class”); and (iii) all DACA residents who
 26 applied for a small business credit card or loan and were declined or will be declined under

27 ⁶ The covered period was defined as January 30, 2015 through the present.
 28

decline codes “M93” or “Q14.” ECF No. 289. The Motion for Class Certification also included two California sub-classes consisting of: (i) all EFS class members in California during the covered period; and (ii) all CFS class members in California during the covered period. *Id.* The decline codes are Wells Fargo’s application database codes that generally reflect credit declines because the applicant is not a U.S. citizen or LPR:

LOB	Product	Code	Reason
EFS	Student loan	d01	Applicant does not meet citizenship requirement.
CFS	Unsecured credit card	1409	Not a permanent United States resident.
CFS	Unsecured credit card	1614	Unable to verify permanency of residence.
CFS	Unsecured personal loan	34N	Applicant is not a permanent United States resident.
CFS	Unsecured personal loan	321	We do not offer credit of this type or on the terms requested. ⁷
BD	Small business loan or credit card	M93	Product only available to businesses headquartered in the U.S., and owned by citizens or permanent residents.
BD	Small business loan or credit card	Q14	Product only available to businesses headquartered in the U.S., and owned by and whose debt is guaranteed by citizens or permanent residents.

In December 2019, the parties agreed to stay the case to participate in a third mediation before further briefing on Plaintiffs’ Motion for Class Certification and the parties’ Cross-Motions for Summary Judgment. Miazad Decl. ¶ 22. The parties mediated the case with Mr. Hughes in Atlanta, Georgia, for a third time, on January 29, 2020, during which they laid the groundwork for a settlement in principle. *Id.* ¶ 23. Over the next five weeks, the parties negotiated a term sheet, which they executed on March 4, 2020. *Id.* ¶ 24. The parties then spent over three months negotiating the terms of the complex Settlement Agreement, during which time Wells Fargo produced its home mortgage lending policy, which Plaintiffs believe is similar enough to student lending and personal lending to include in the Settlement. *Id.* ¶¶ 25-27. On June 16, 2020, the parties executed a long-form Settlement Agreement. *Id.* ¶ 27.

⁷ This denial code is only used to identify class members between January 30, 2015 and February 13, 2015. After February 13, 2015, class members are identified by the 34N denial code. *See* ECF No. 247.

1 **III. THE PROPOSED SETTLEMENT**

2 **A. The Settlement Classes**

3 For settlement purposes only and consistent with the parties' settlement agreement,
4 Plaintiffs seek certification of the following classes, defined as:

5 **California Class** means all individuals who, between January 30, 2015 and the date of
6 preliminary approval (or for home mortgage, between January 29, 2018 and the date of
7 preliminary approval), held valid and unexpired DACA status, applied for credit from the Wells
8 Fargo credit card, student lending, personal lines and loans, or home mortgage lines of business,
9 were denied as set forth in the Class Data produced by Wells Fargo, and were California residents
10 as set forth in the Class Data produced by Wells Fargo. SA § 1.9.2.

11 **National Class** means all individuals who, between January 30, 2015 and the date of
12 preliminary approval (or for home mortgage, between January 29, 2018 and the date of
13 preliminary approval), held valid and unexpired DACA status, applied for credit from the Wells
14 Fargo credit card, student lending, small business lending, personal lines and loans, or mortgage
15 lines of business, were denied as set forth in the Class Data produced by Wells Fargo, and were
16 not California residents as set forth in the Class Data produced by Wells Fargo.⁸ SA § 1.9.1.

17 Because Wells Fargo did not record whether applicants had DACA, its data set listing
18 potential Class Members consists of approximately 330,000 applicants in the United States with
19 valid SSNs who did not meet Wells Fargo's citizenship or immigration status requirements—
20 DACA and non-DACA applicants alike, including work-authorized non-citizens with
21 employment visas and recipients of temporary protected status ("TPS"), all of whom are eligible
22 for SSNs. However, limiting this data set based on characteristics common to DACA recipients,
23 such as U.S. addresses and valid SSNs, suggest that the California and National Classes (*i.e.*,
24 those with DACA), comprise at least 50,000 individuals.

25 ⁸ Both the National and California Classes limit the relevant period for home mortgage to
26 January 29, 2018 through preliminary approval. January 29, 2018 is two years before the parties
27 mediated the case for the third time and laid the groundwork for a settlement in principle.

28 Excluded from both Classes are Wells Fargo, all officers, directors, and employees of
Wells Fargo, and their legal representatives, heirs, or assigns, and any Judges to whom the Action
is assigned, their staffs, and their immediate families.

1 **B. Settlement Overview**

2 The settlement provides two important forms of relief for the Class Members: (1)
3 programmatic relief under which Wells Fargo will change its lending practices for its credit card,
4 student lending, small business lending, personal lines and loans, and mortgage LOBs to extend
5 unsecured credit to current and valid DACA recipients on the same terms and conditions as U.S.
6 citizens; and (2) a Settlement Fund of \$4,750,000 to \$13,100,000, depending on the number of
7 claimants, to compensate for the harm they allege that they suffered. The parties have agreed that
8 the Settlement shall be administered as if governed by 28 U.S.C. § 1715, and Wells Fargo has
9 agreed to provide CAFA Notice as required by that statute.

10 **1. Programmatic Relief**

11 This settlement provides exceptional programmatic relief: in connection with the
12 settlement, Wells Fargo will change its lending practice for its credit card, student lending, small
13 business lending, personal lines and loans, and home mortgage LOBs to extend unsecured credit
14 to current DACA recipients on the same terms and conditions as U.S. citizens, so long as there is
15 an appropriate product. SA § 3.2.1. Wells Fargo has also agreed to annually provide to Class
16 Counsel a written description explaining the status of the Programmatic Relief for a period of two
17 years. *Id.* § 3.2.2.

18 While it is difficult to quantify the benefit that this programmatic relief will convey to
19 DACA recipients in the years to come, these changes will be extremely valuable. If even 10,000
20 DACA recipients nationwide apply for credit each year for the next four years, and the
21 availability of such credit is worth \$2,000 (half the statutory penalty for depriving someone
22 access to loans and credit under the Unruh Act), these changes are worth \$80,000,000. Moreover,
23 this figure may be conservative, as many more individuals will get even greater economic
24 opportunity from these changes in the coming years.

25 **2. Monetary Relief**

26 The \$18,700,000 settlement amount will cover: (a) up to \$13,100,000 in cash payments to
27 Class Members; (b) incentive awards of \$25,000 for each of the six Plaintiffs, totaling \$150,000;
28

(c) settlement administration costs, not to exceed \$450,000; and (d) up to \$5,000,000 in attorneys' fees and costs. SA §§ 3.3.1; 3.3.4; 3.37; 15.1; 15.2.

Wells Fargo will create separate settlement funds for the California Class and the National Class ("California Fund" and "National Fund," respectively), both of which will be funded based on claims made by Class Members. *Id.* §§ 1.44.1; 1.44.2. Wells Fargo's Class Data will determine how many claims each Class Member may make, *i.e.*, how many times each Class Member was denied a loan or credit card in the relevant period. *Id.* §§ 1.28; 1.47. In other words, as long as a Class Member makes one valid claim, they will receive a cash payment for each credit denial that appears in the Class Data. *Id.* For the California Fund, (1) the first 2,000 Verified Claims⁹ from California Class Members shall add \$2,500 per claim to the fund, up to \$5,000,000; (2) the next 3,000 Verified Claims from California Class Members shall add \$2,000 per claim to the fund, up to \$6,000,000; and (3) the next 2,000 Verified Claims from California Class Members shall add \$800 per claim to the fund, up to \$1,600,000. *Id.* § 3.3.2. The California Fund will have a floor of \$4,700,000 and a cap of \$12,600,000, depending on the number of claimants. *Id.* § 3.3.4.

The National Fund will be created by adding \$100 to the fund for every Verified Claim from National Class Members, up to and not to exceed \$500,000. *Id.* § 3.3.5. The amount in each fund will be determined based on Verified Claims and will only be funded up to the number of Verified Claims. *Id.* § 1.44. As explained in detail below, California Class Members who submit a Verified Claim shall be paid *pro rata* from the California Fund and National Class Members shall be paid *pro rata* from the National Fund. *Id.* §§ 3.3.3; 3.3.6. In other words, National Class Members will receive up to \$100 per Verified Claim and California Class

⁹ "Verified Claim" means a written request, submitted via a Claim Form, submitted by a Settlement Class Member to the Settlement Administrator, pursuant to the instructions set forth in the Claim Form, including Official Documentation. SA § 1.47. "Verified Claim Form" means a Claim Form that is (a) fully completed and properly executed showing the Verified Claimant is entitled to Claim Settlement Relief, including a fully completed and properly executed Form W-9, (b) timely returned to the Settlement Administrator, (c) validated by the Settlement Administrator pursuant to the procedures set forth in this Agreement, and (d) which includes Official Documentation. *Id.* § 1.48.

1 Members will receive an amount up to \$2,500 per claim, depending on the number of Verified
2 Claims.

3 Following preliminary approval of the Settlement Agreement, Wells Fargo will provide
4 the Settlement Administrator and Class Counsel with the updated Class Data.¹⁰ *Id.* § 7.2. The
5 Settlement Administrator will issue notice via U.S. mail and email (where an email address is
6 available) to all individuals on the Notice List within 35 days of the preliminary approval order.
7 SA § 7.3. Those individuals will have 60 days to make a claim in the settlement or 45 days to
8 exclude themselves or file an objection with the Court. *Id.* §§ 1.6; 1.29; 1.31.

9 To make a claim in, opt out of, or object to the settlement, Class Members will be required
10 to sign and return a one-page form (“Claim Form”) to the Settlement Administrator. *Id.* §§ 5.2;
11 5.3; 11.1; 12.3. The Claim Form will require the recipient to affirm that they: (1) had valid and
12 unexpired DACA status at the time they applied for one of the relevant credit products; (2) were
13 denied at least one of those products; and (3) that they have and are prepared to provide official
14 documentation to verify that status. *Id.* §§ 5.2; 5.3. Class Members seeking to opt-out of or
15 object to the settlement will, in addition, be asked to demonstrate their current or former valid and
16 unexpired DACA status by providing (1) an I-797 Approval Notice from an I-821-D and/or (2) a
17 work authorization card containing the code “C-33” (“Official Documentation”). *Id.* §§ 11.1;
18 12.3. Claim Forms may be submitted online or by email or mail. *Id.* Ex. 2 (Claim Form).
19 Consistent with current best practices, the Settlement Administrator will maintain a dual-language
20 (English-Spanish) website providing the Notice, Claim Form, Settlement Agreement and
21 Exhibits, key motions, and orders. *Id.* § 7.8. The Claims Administrator will also create a dual-
22 language (English-Spanish) toll-free phone number. *Id.* § 6.2. A reminder notice will be issued
23 by email only, if available, 30 days into the claims period. *Id.* § 7.6.

24 After final approval of the Settlement, the Settlement Administrator will contact the
25

26 ¹⁰ The Class Data will identify (i) individuals who were denied student loans, credit cards,
27 small business loans, personal loans, and home mortgages, including the number of denials of
28 each of the preceding credit products; (ii) during the class period; (iii) based on agreed-to denial
codes related to their residency status; (iv) where the individual provided an SSN, a U.S. address,
and were not listed as a U.S. citizen or LPR.

1 individuals who submitted Claim Forms and request documentation to demonstrate that they have
 2 valid and unexpired DACA status, or had valid DACA status at the time of their denial. *Id.*
 3 § 5.2.2. Upon timely receiving this information, the Settlement Administrator will validate the
 4 Claim Form and documentation and, if consistent with the terms of the Settlement Agreement,
 5 will deem the claim to be one or more Verified Claims. *Id.* If at any point during the claims
 6 period an individual submits a Claim Form or Official Documentation that the Settlement
 7 Administrator deems deficient, the Settlement Administrator will promptly notify that individual
 8 and Class Counsel, and the individual will have 14 days to cure any deficiency. *Id.* § 5.4. A
 9 Class Member may make only one Verified Claim per denied application. *Id.* §§ 5.4.3; 5.3.3.
 10 Joint or multiple borrowers who are denied on a single application will be treated as a single
 11 application and their *pro rata* share will be divided equally per applicant. *Id.* §§ 5.4.3; 5.3.3.

12 After this phase, the Settlement Administrator will advise Wells Fargo of the amount of
 13 each Settlement Fund based on the number of Verified Claims. *Id.* § 3.3.10. Within 21 days of
 14 receiving notice of the amount of the Settlement Funds, Wells Fargo will transfer those funds to
 15 the Settlement Administrator, which will issue and mail checks to Class Members. *Id.* §§ 3.3.2;
 16 3.3.5.

17 In exchange for the consideration described above, each Class Member shall release Wells
 18 Fargo of any and all claims (the “Released Claims”) relating to Wells Fargo’s denial of their loan
 19 applications based on alienage, lack of citizenship and/or immigration status, including, but not
 20 limited to, any claims under 42 U.S.C. § 1981, the California Unruh Act, Cal. Civil Code §§ 51
 21 and 52 *et seq.*, other state civil rights statutes, the Equal Credit Opportunity Act, and the Fair
 22 Credit Reporting Act.¹¹ SA §§ 1.36; 10. The Class Representatives will also agree to a general
 23

24
 25 ¹¹ Although this release is broader than the claims pled in the complaint, Class Counsel are
 26 unaware of any additional viable claims it would extinguish. Beyond the Unruh Act, no other
 27 state law civil rights statutes provide comparable statutory penalties for claims related to the
 28 denial of Class Members’ loan applications based on alienage, lack of citizenship and/or
 immigration status. These special circumstances justify a broadened release. *See, e.g., Seguin v.*
Cty. of Tulare, No. 16 Civ. 01262, 2018 WL 1919823, at *5 (E.D. Cal. Apr. 24, 2018) (a broad
 release was permissible where the settlements reflected a reasonable compromise achieved
 through negotiation).

1 release of all Released Claims against Wells Fargo for claims related to the denial of their loan
2 applications. *Id.* § 1.36; 10.3.

3 After consulting with the proposed Settlement Administrator about its experience and,
4 based on their communications with Class Members to date and the realities of DACA recipients'
5 lives, Plaintiffs estimate that 5% to 15% of the Class Members will return Claim Forms. *See*,
6 *e.g.*, *Donnenfeld v. Petro, Inc.*, No. 17 Civ. 2310 (E.D.N.Y. Mar. 5, 2020), ECF No. 80-1
7 (8,074/91,807 or 8.6% of class members filed claims); *In re MyFord Touch Consumer Litig.*, No.
8 13 Civ. 3072 (N.D. Cal. Nov. 7, 2019), ECF No. 542 (claims submitted on behalf of 4.5% of
9 class); *Edwards v. Hearst Commc'ns*, No. 15 Civ. 9279 (S.D.N.Y. Apr. 4, 2019), ECF No. 310
10 (294,748/3,930,421 or 7% of class members filed claims); *see also* Miazad Decl. ¶ 36. Plaintiffs
11 estimate that the return rate for California Class Members will be on the higher end of that range,
12 considering the high amount of the settlement award per denial, and that the return rate for
13 National Class Members will fall on the lower end of the range. Miazad Decl. ¶ 37.

14 **C. Class Representative and Individual Plaintiff Service Awards¹²**

15 The Settlement provides that, subject to Court approval, Wells Fargo will pay Plaintiffs
16 Perez, Barajas, Rodas, Villafuerte, Acosta, and Vedoy service awards of \$25,000 each. SA
17 § 15.2. These payments are intended to compensate them for (a) the significant time and effort
18 over the past three years they have spent on behalf of the Class assisting Class Counsel with the
19 prosecution of these claims, (b) the resulting significant value they have conferred to Class
20 Members, and (c) the significant exposure and risk they incurred by exposing themselves as
21 DACA recipients and taking a leadership role in a lawsuit that has garnered broad media
22 coverage.¹³ *See, e.g.*, *Galeener v. Source Refrigeration & HVAC, Inc.*, No. 13 Civ. 04960, 2015

24 ¹² This Section and the next Section preview, at a general level, the more detailed factual and
25 legal presentation Plaintiffs will provide in their fee petition and request for approval of Incentive
Awards to be filed prior to the Final Approval Hearing.

26 ¹³ *See, e.g.*, Molina, Alejandra, *Lawsuit claiming Wells Fargo illegally denied loans to*
27 *DACA beneficiaries can go forward, court says*, Aug. 4, 2017, available at:
<https://www.pe.com/2017/08/04/lawsuit-claiming-wells-fargo-illegally-denied-loans-to-daca-beneficiaries-can-go-forward-court-says/>; Dinzeo, Maria, *Wells Fargo Can't Duck Dreamers'*
28 *Claim of Lending Bias*, Aug. 4, 2017, available at: <https://www.courthousenews.com/wells-fargo-cant-duck-dreamers-claim-lending-bias/>.

WL 12976106, at *3 (N.D. Cal. Aug. 20, 2015) (Chhabria, J.) (\$27,000 and \$25,000 to two class representatives); *Buccellato v. AT&T Operations, Inc.*, No. 10 Civ. 00463, 2011 WL 3348055, at *2 (N.D. Cal. June 30, 2011) (Koh, J.) (\$20,000 to lead plaintiff); *Lewis v. Wells Fargo & Co.*, No. 08 Civ. 2670, slip op. at 4 (N.D. Cal. Apr. 29, 2011), ECF No. 315 (Wilken, J.) (\$22,000 and \$20,000 for named plaintiffs); *Ross v. U.S. Bank Nat'l Ass'n*, No. 07 Civ. 2951, 2010 WL 3833922, at *4 (N.D. Cal. Sept. 29, 2010) (Illston, J.) (\$20,000 service award for each of four class representatives); *Glass v. UBS Fin. Servs., Inc.*, No. 06 Civ. 4068, 2007 WL 221862, at *16-17 (N.D. Cal. Jan. 26, 2007) (Chesney, J.) (\$25,000 to each of four class representatives). For these reasons, the incentive awards are appropriate and do not undermine the adequacy of the Plaintiffs as Class Representatives.

D. Attorneys' Fees and Costs

The Settlement Agreement allows Class Counsel to request an award of attorneys' fees and expenses of up to \$5,000,000. SA § 15.1. In a non-common fund case brought under fee-shifting statutes such as Section 1981 and the Unruh Act, the lodestar method for awarding attorneys' fees is appropriate. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941-42 (9th Cir. 2011); *Ross v. Trex Co.*, No. 09 Civ. 670, 2013 WL 12174133, at *1 (N.D. Cal. Dec. 16, 2013). The lodestar figure is "presumptively reasonable." *Cunningham v. Cty. of Los Angeles*, 879 F.2d 481, 488 (9th Cir. 1988). Additionally, the fact that the award of attorneys' fees and costs was negotiated separately and will not be paid out of the relief available to the class supports a finding that the requested fee award is reasonable. *Fulford v. Logitech, Inc.*, No. 08 Civ. 204, 2010 WL 807448, at *1 (N.D. Cal. Mar. 5, 2010) (Chesney, J.).

Class Counsel's lodestar in this hotly contested litigation is approximately \$5,049,000, based on approximately 10,000 attorney hours over the course of three and a half years of litigation, and Plaintiffs' costs are approximately \$332,000. Plaintiffs intend to request an award of attorneys' fees and expenses of \$5,000,000. Class Counsel have performed substantial work to earn this fee, including defeating four motions to dismiss and/or strike the complaint, amending the complaint five times, briefing class certification, retaining and preparing three experts, engaging in extensive discovery, which led to protracted disputes including approximately 12

1 discovery dispute letters filed before Magistrate Judge Laporte, preparing for and attending three
 2 mediations, and negotiating the complex Settlement. Further, the fees and costs were negotiated
 3 separately from the Settlement Fund.

4 Class Counsel's lodestar will increase during the coming months while Class Counsel
 5 continues to work to secure preliminary approval, oversee the dissemination of notice, respond to
 6 Class Member inquiries, and brief and seek final approval. *Johnson v. Triple Leaf Tea Inc.*, No.
 7 14 Civ. 1570, 2015 WL 8943150, at *8 (N.D. Cal. Nov. 16, 2015) (Chesney, J.) (accounting for
 8 "future attorney time" in decision whether attorneys' fees were reasonable).

9 **E. Settlement Administration Costs**

10 The Settlement Agreement provides that Wells Fargo will pay the cost of a Settlement
 11 Administrator, up to \$450,000. The parties have selected JND Legal Administration Co. ("JND")
 12 as Settlement Administrator. The parties selected JND by gathering bids from three settlement
 13 administrators from a list of four approved settlement administrators proposed by Wells Fargo.
 14 Miazad Decl. ¶ 47. Because the method of notice and claims payment processes are delineated in
 15 the Settlement Agreement, no new methods were proposed by the proposed settlement
 16 administrators, and instead the parties evaluated whether the proposed settlement administrators
 17 were equipped to handle the notice and claims process as negotiated by the parties. *Id.* ¶ 48.
 18 Class Counsel has retained JND to administer the claims process in 14 cases in the past two years,
 19 including cases with complex claims processes like this one. *See, e.g., del Toro Lopez v. Uber*
 20 *Techs., Inc.*, No. 17 Civ. 6255, 2018 WL 5982506, at *14 (N.D. Cal. Nov. 14, 2018); Miazad
 21 Decl. ¶ 50 (listing cases JND has worked on with Class Counsel in the past two years).

22 JND has agreed to perform all administration work set forth in the Settlement Agreement
 23 for a will-not-exceed cost of \$450,000, which JND anticipates being sufficient to cover the total
 24 costs of settlement administration. SA § 6. The Settlement Administrator's maximum fee
 25 amounts to approximately 2.4% of the \$18,600,000 maximum Settlement Fund, which is
 26 reasonable in light of the amount and complexity of the work to be performed (especially
 27 processing and verifying the Claim Forms, which will require careful manual review), and is in
 28 line with settlement administration fees in comparable cases. *See, e.g., Pappas v. Naked Juice Co*

1 of *Glendora, Inc.*, No. 11 Civ. 8276, 2014 WL 12382279, at *19 (C.D. Cal. Jan. 2, 2014)
 2 (\$816,000 administration fee, equal to 9% of \$9 million settlement); *Covillo v. Specialty Cafe*,
 3 No. 11 Civ. 00594, 2013 WL 5781574, at *7 (N.D. Cal. Oct. 25, 2013) (up to \$48,741
 4 administration fee, equal to 2.4% of \$2 million settlement).

5 F. Cy Pres Awardees

6 Plaintiffs have negotiated a settlement that requires Wells Fargo to pay at least
 7 \$4,750,000. In the event that the combined payments to Class Members from the California and
 8 National Settlement Funds is less than this floor, the amount between the total distributions to
 9 Class Members and \$4,750,000 shall be distributed equally between TheDream.US and
 10 UnidosUS.¹⁴ *Id.* § 3.3.9. TheDream.US is a non-profit that provides college scholarships to
 11 immigrant youth including DACA recipients and UnidosUS is a non-profit that serves the
 12 Hispanic community through research, policy analysis, legislative advocacy, and community-
 13 level programming. Miazad Decl. ¶¶ 59, 61. Both organizations have a national reach and work
 14 to provide equal opportunity to the DACA community. *See In re Easysaver*, 906 F.3d at 761-62
 15 (*cy pres* recipients should be selected in light of the objectives of the underlying statute and the
 16 interests of the class). Class Counsel Thomas Saenz served on the Advisory Board of
 17 TheDream.US but resigned from that Board in June 2020. *Id.* ¶ 60. Class Counsel do not have
 18 any other relationships, presently or in the past, with these organizations. *Id.* ¶ 60, 62.

19 IV. ARGUMENT

20 Settlement approval “involves a two-step process in which the Court first determines
 21 whether a proposed class action settlement deserves preliminary approval and then, after notice is
 22 given to class members, whether final approval is warranted.” *Nat’l Rural Telecomm. Coop. v.*
 23 *DirecTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004); *see also* Manual for Complex Litigation
 24 §§ 21.632-634 (4th ed. 2004). Preliminary approval requires two elements: First, the court must
 25 determine that the settlement class meets the requirements for class certification if it has not yet
 26

27 ¹⁴ *See Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1307 (9th Cir. 1990)
 28 (holding that *cy pres* distribution is appropriate “for the limited purpose of distributing the
 unclaimed funds”); *In re Easysaver Rewards Litig.*, 906 F.3d 747, 761 (9th Cir. 2018) (same).

1 been certified, Fed. R. Civ. P. 23(a), (b), and second, the court must determine that the settlement
 2 is fair, reasonable, and adequate, Fed. R. Civ. P. 23(e)(2). *Hanlon*, 150 F.3d at 1025-26.

3 **A. Certification of the Rule 23 Classes Is Proper.**

4 For settlement purposes, the parties agree to certification of the California Class and the
 5 National Class.¹⁵ “The validity of use of a temporary settlement class is not usually questioned.”
 6 Alba Conte & Herbert B. Newberg, 4 Newberg on Class Actions § 11:22 (4th ed. 2002). The
 7 relevant factors also weigh in favor of certification.

8 **1. Rule 23(a) Is Satisfied.**

9 First, numerosity is met because joinder of Class Members would be impractical. Fed. R.
 10 Civ. P. 23(a)(1). Wells Fargo’s data on applicants who did not meet its citizenship or
 11 immigration status requirements – refined based on characteristics common to DACA recipients –
 12 reveals that the classes here likely consist of thousands of individuals. The Notice List contains
 13 approximately 330,000 individuals and Class Counsel believe 20-25%, or up to approximately
 14 80,000 individuals, are DACA recipients who could be National or California Class Members.
 15 Miazad Decl. ¶¶ 34-35. Further, potential Class Members are “geographically dispersed”
 16 nationwide, including within California, which supports a finding of numerosity. *See Civil Rights*
 17 *Educ. & Enf’t Ctr. v. RLJ Lodging Tr.*, No. 15 Civ. 224, 2016 WL 314400, at *6 (N.D. Cal. Jan.
 18 25, 2016) (noting that “joinder may be impracticable where a class is geographically dispersed”).

19 Second, commonality is met because “there are questions of law or fact common to the
 20 class.” Fed. R. Civ. P. 23(a)(2). The Supreme Court has stated that the focus is on whether there
 21 are common issues of fact among class members and whether class treatment will “generate
 22 common *answers* apt to drive the resolution of the litigation.” *Abdullah v. U.S. Sec’y Assocs.*,

24 ¹⁵ Plaintiffs pled three nationwide classes and two California subclasses in the 5AC, ECF
 25 No. 267, and in Plaintiffs’ Motion for Class Certification, ECF No. 289. The Settlement
 26 Agreement consolidates the three nationwide classes into the National Class and the two
 27 California subclasses into the California Class. Substantively, the classes are the same; they
 28 cover the same products offered by the same lines of business within the same time period, and
 both encompass denials made under the same internal Wells Fargo denial codes. The only
 difference is in the inclusion of home mortgage, which Plaintiffs address below.

731 F.3d 952, 957 (9th Cir. 2013) (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). Here, common questions include whether Wells Fargo’s lending policies deny Plaintiffs and Class Members the opportunity to be considered for credit because of their alienage or DACA status and whether Wells Fargo’s lending policies violate Section 1981 or the Unruh Act. Further, Plaintiffs assert liability based on uniform lending policies that apply to all Class Members.¹⁶

Third, typicality is satisfied. Rule 23 typicality requires a finding that the “claims or defenses of the representative parties [be] typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). Under the rule’s “permissive” standard, “representative claims are ‘typical’ if they are reasonably co-extensive with those of absent class members; they need not be substantially identical.” *Johnson*, 2015 WL 8943150, at *3 (quoting *Hanlon*, 150 F.3d at 1020). Here, the Class Representatives are typical of the classes they propose to represent because (1) each lived in California or the United States, (2) each held DACA and a valid SSN when they applied for a credit product from one or more of the five Wells Fargo LOBs at issue in this Settlement; and (3) each alleged that he or she was denied credit because they were not U.S. citizens or LPRs pursuant to Wells Fargo’s policies.¹⁷

Fourth, Plaintiffs have fairly and adequately protected the interests of the class and will continue to do so. Fed. R. Civ. P. 23(a)(4). The adequacy requirement is met where the class representatives: (1) have common, and not antagonistic, interests with unnamed class members, and (2) will vigorously prosecute the interests of the class through qualified counsel. *Hanlon*, 150 F.3d at 1020; *see also Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997).

¹⁶ *See, e.g., Stevens v. Harper*, 213 F.R.D. 358, 377 (E.D. Cal. 2002) (in civil rights context, “commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members”).

¹⁷ At the pleading stage, the Court struck references to home mortgages from the Complaint, explaining that Plaintiffs had not identified any plaintiff whose claim was “typical” of putative class members who had sought and were denied a home mortgage. ECF No 197. In the course of settlement negotiations, Wells Fargo produced the home mortgage policy, which Plaintiffs have analyzed and concluded is substantially similar to the student loan and personal loan lines of business, such that the theory of liability is typical between Class Representatives and Class Members. Miazad Decl. ¶ 26. Moreover, the harm of denial based on DACA status is the same. In this context, including home mortgage in the Settlement does not affect typicality.

1 Adequacy is met because Class Representatives have the same interests as other Class
 2 Members and have shown that they can fairly and adequately protect Class Members' interests.
 3 Like all Class Members, Class Representatives were denied credit by Wells Fargo under specific
 4 denial codes pursuant to Wells Fargo's lending policies. Miazad Decl. ¶ 52. Class
 5 Representatives have no conflicts of interest with the Class Members and, indeed, California
 6 Class Members stand to benefit substantially from Class Representatives' pursuit of statutory
 7 damages on their behalf. Class Representatives (along with Individual Plaintiffs) have vigorously
 8 represented the interests of their fellow Class Members and devoted substantial time to the
 9 prosecution of this action, including by responding to extensive discovery, reviewing documents
 10 produced by Wells Fargo, sitting for depositions, and having numerous phone calls and in-person
 11 meetings with counsel. *Id.* ¶ 53.

12 In addition, Plaintiffs are represented by adequate counsel. Outten & Golden LLP and the
 13 Mexican American Legal Defense and Educational Fund ("MALDEF"), have extensive
 14 experience litigating complex civil rights and employment class actions and have vigorously
 15 prosecuted this action on behalf of Plaintiffs through extensive motion practice and fact and
 16 expert discovery. Miazad Decl. ¶¶ 4-9 (collecting cases); Declaration of Belinda Escobosa
 17 Helzer ("Helzer Decl.") ¶¶ 5-9 (same); *see also, e.g., Walsh v. CorePower Yoga LLC*, No. 16 Civ.
 18 05610, 2017 WL 589199, at *8 (N.D. Cal. Feb. 14, 2017) ("[Outten & Golden] ha[s] a proven
 19 track record in the prosecution of class actions as they have successfully litigated and tried many
 20 major class action cases.").

21 For these reasons, Class Counsel satisfy the adequacy requirement of Rule 23(a).

22 **2. Certification Is Proper Under Rule 23(b)(3).**

23 Rule 23(b)(3) requires that common questions predominate over individual ones, and that
 24 a class action is superior to other available methods for adjudicating the controversy. Fed. R. Civ.
 25 P. 23(b)(3). Both of these requirements are met here.

26 The proposed classes, the California Class and the National Class, are sufficiently
 27 cohesive to satisfy predominance. *Amchem*, 521 U.S. at 623. Predominance does not require
 28 "that each element of [a plaintiff's] claim [is] susceptible to classwide proof." *Amgen Inc. v.*

1 *Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 469 (2013) (internal quotation marks and citation
 2 omitted). Rather, “[t]he predominance inquiry ‘asks whether the common, aggregation-enabling,
 3 issues in the case are more prevalent or important than the non-common, aggregation-defeating,
 4 individual issues.’” *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (quoting
 5 William B. Rubenstein, *Newberg on Class Actions* § 4:50 (5th ed.)). Here, Plaintiffs challenge
 6 policies that apply to all Class Members. Common questions as to their nature and legality can be
 7 adjudicated collectively and will drive the resolution of plaintiffs’ claims.¹⁸

8 Superiority rests on factors like individual class members’ desire to bring individual
 9 actions and the utility of concentrating the litigation in one forum. Fed. R. Civ. P. 23(b)(3).
 10 Here, “there is no indication, that class members seek to individually control their cases, that
 11 individual litigation is already pending in other forums, or that this particular forum is undesirable
 12 for any reason.” *Tierno v. Rite Aid Corp.*, No. 05 Civ. 02520, 2006 WL 2535056, at *11 (N.D.
 13 Cal. Aug. 31, 2006); *see also Amchem*, 521 U.S. at 615. Few Class Members would invest the
 14 time and money, plus the stress inherent in litigation, for a chance to possibly recover modest
 15 damages. In addition, individual lawsuits from hundreds of plaintiffs would be wasteful and
 16 inefficient for the court system. *See, e.g., Whiteway v. FedEx Kinko’s Office & Print Servs., Inc.*,
 17 No. 05 Civ. 2320, 2006 WL 2642528, at *11 (N.D. Cal. Sept. 14, 2006). Because the class
 18 mechanism will achieve economies of scale for Class Members, conserve judicial resources, and
 19 preserve public confidence in the system by avoiding repetitive proceedings and preventing
 20 inconsistent adjudications, superiority is met.

21 **3. Plaintiffs’ Counsel Should Be Appointed as Class Counsel.**

22 Adequacy of class counsel depends on (1) work performed on the matter, (2) experience,
 23 (3) knowledge of the law, and (4) resources counsel can commit. Fed. R. Civ. P. 23(g)(1)(A).
 24

25 ¹⁸ *See, e.g., Ellis v. Costco Wholesale Corp.*, 285 F.R.D. 492, 509, 538 (N.D. Cal. 2012)
 26 (predominance satisfied as to discrimination claims where plaintiffs challenged “specific
 27 employment practices” that applied “companywide”); *cf. Jones v. Wells Fargo Bank, N.A.*, No.
 28 B237282, 2015 WL 661757, at *8, 15 (Cal. Ct. App. Feb. 17, 2015) (affirming class certification
 for Unruh Act claims challenging Wells Fargo practices that resulted in race-based lending
 discrimination); *id.* at *14 (“Claims that a uniform policy was consistently applied to a group are
 proper for class treatment.”).

1 Class Counsel readily satisfy these criteria, as set forth above. *See supra* Part IV.A.1; *see also*
 2 Miazad Decl. ¶¶ 4-9; Helzer Decl. ¶¶ 5-9.

3 **B. The Settlement Is Fair, Reasonable, And Adequate.**

4 Once the Court has found class certification proper, the next step of the preliminary
 5 approval process is to assess whether the settlement is “fundamentally fair, adequate, and
 6 reasonable.” *Hanlon*, 150 F.3d at 1026. Typically, the first-stage analysis inquires into “obvious
 7 deficiencies,” with preliminary approval granted if the settlement is non-collusive and within the
 8 range of possible final approval. *Walsh*, 2017 WL 589199, at *6 (quoting *In re Tableware*
 9 *Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)).¹⁹

10 When considering whether to grant approval, courts often “put a good deal of stock in the
 11 product of an arms-length, non-collusive, negotiated resolution.” *Rodriguez v. W. Publ’g Corp.*,
 12 563 F.3d 948, 965 (9th Cir. 2009). Courts may also assess the following factors, which are
 13 assessed in greater detail at final approval. These factors are: (1) “the strength of the plaintiffs’
 14 case,” “the risk, expense, complexity, and likely duration of further litigation,” and “the risk of
 15 maintaining class action status throughout the trial,” (2) “the amount offered in settlement,” (3)
 16 “the extent of discovery completed and the stage of the proceedings,” and (4) “the experience and
 17 views of counsel.” *Hanlon*, 150 F.3d at 1026. In addition, courts review “the presence of a
 18 governmental participant” and “the reaction of the class members to the proposed settlement.” *Id.*
 19 The former is not relevant, and the latter cannot be gauged at this stage.

20 **1. Plaintiffs’ Case Faced Significant Hurdles on Liability and Class**
 21 **Certification.**

22 “Approval of a class settlement is appropriate when ‘there are significant barriers
 23 plaintiffs must overcome in making their case.’” *Betancourt v. Advantage Human Resourcing,*
 24 *Inc.*, No. 14 Civ. 01788, 2016 WL 344532, at *4 (N.D. Cal. Jan. 28, 2016). Plaintiffs face
 25 substantial obstacles to full recovery. First, liability is far from guaranteed. This litigation—a

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 27 ¹⁹ *See also Cancilla v. Ecolab, Inc.*, No. 12 Civ. 3001, 2015 WL 4760318, at *3 (N.D. Cal.
 28 Aug. 12, 2015) (focusing preliminary approval analysis on “noncollusive negotiations,” the lack
 of “obvious deficiencies” or “preferential treatment,” and being “with[in] the range of possible
 approval”); Alba Conte & Herbert B. Newberg, 4 *Newberg on Class Actions*, § 13.15 (5th ed.).

lending discrimination class action on behalf of DACA recipients—presents a novel theory with numerous unsettled issues. Other defendants in cases involving Section 1981 challenges on behalf of DACA recipients have argued that DACA recipients are not “lawfully present” in the United States to show that they are not members of a protected class under Section 1981 and Wells Fargo may raise a similar argument. Wells Fargo may also point to instances in which it extended credit to DACA recipients through what it characterizes as an “exceptions process” as proof that Wells Fargo does not discriminate against DACA recipients. Wells Fargo could also highlight events in Plaintiffs’ credit history to show that they were not qualified for the credit products they sought, regardless of their DACA status. Finally, Wells Fargo has vigorously contended that its lending policies are justified because DACA—which the current administration has attempted to rescind—is a tenuous immigration status and a bank is justified in limiting credit to applicants who might be subject to deportation orders at any time from eligibility for credit for credit risk, business, compliance, and regulatory reasons.

Plaintiffs also face obstacles to obtaining class certification. As explained above, Plaintiffs cannot identify Class Members from Wells Fargo’s data with certainty, which presents manageability issues. Wells Fargo could also argue that Plaintiffs cannot show commonality because Wells Fargo did not have an explicit policy that made DACA recipients ineligible based on their DACA status for the challenged credit products, or because some applicants would have been denied credit regardless of immigration status.

2. The Settlement Amount Is Appropriate.

“[P]erhaps the most important factor” courts consider in determining whether to grant preliminary approval is “plaintiffs’ expected recovery balanced against the value of the settlement offer.” *Cotter v. Lyft, Inc.*, 176 F. Supp. 3d 930, 935 (N.D. Cal. 2016) (Chhabria, J.) (internal quotation marks omitted). Here, the monetary and programmatic relief provide excellent value for Class Members. Though the precise amount of the monetary awards per Class Member is not yet known, under any scenario the monetary relief under the Settlement is likely to be a high percentage of their maximum damages. Similarly, the settlement provides the greatest degree of programmatic relief possible.

1 California Class Members are eligible for individual awards of up to \$2,500 per denial of
 2 a credit application, more than 60% of the statutory damages available under the Unruh Act for
 3 each discriminatory act. Cal. Civil Code § 52(a) (providing statutory damages of \$4,000 per
 4 violation); Miazad Decl. ¶ 31. This is an excellent result for California Class Members.²⁰ If a
 5 higher number of California Class Members submit Verified Claim forms – and because
 6 monetary awards are paid *pro rata* – individual awards may decrease to \$1,800 per claim or
 7 lower. Miazad Decl. ¶ 32. However, even if 12,000 California Class Members submit Verified
 8 Claims – a substantially higher response rate than the parties anticipate – that would amount to
 9 awards of approximately \$1,050 each, more than 25% of the \$4,000 minimum damages under
 10 Unruh. *Id.* In light of the risks of an adverse judgment on the merits or class certification, even
 11 awards on the lower end of this range provide an excellent value to California Class Members.

12 The parties estimate that National Class Members will receive approximately \$100 per
 13 denial. Miazad Decl. ¶ 33. This is an excellent benefit for National Class Members because
 14 Plaintiffs withdrew their claims for actual and economic damages under Section 1981 on behalf
 15 of the nationwide class of DACA recipients after consulting with economic experts who
 16 determined that significant obstacles existed to valuing and modeling actual or economic
 17 damages for a denial of credit where Class Members could potentially obtain the same credit
 18 elsewhere, or turn to savings accounts or loans from family members, as some Plaintiffs did. *Id.*
 19 Accordingly, Plaintiffs narrowed their damages claim under Section 1981 to only request
 20 equitable and injunctive relief. ECF No. 267 (5AC) ¶ 95. As nominal damages are considered
 21 “symbolic in nature,” *Bayer v. Neiman Marcus Grp., Inc.*, 861 F.3d 853, 872 (9th Cir. 2017), the
 22 monetary relief obtained for National Class Members in this action is excellent.

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 24
 25 ²⁰ See, e.g., *Betancourt*, No. 14 Civ. 1788, 2016 WL 344532, at *5 (N.D. Cal. Jan 28, 2016)
 26 (granting final approval of settlement providing approximately 9.7% of total maximum potential
 27 recovery if class members had prevailed on all claims); *Stovall-Gusman v. W.W. Granger, Inc.*,
 28 No. 13 Civ. 2540, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (finding that a settlement
 constituting 7.3% of plaintiff’s estimated trial award to be “within the range of reasonableness”
 (quoting *Ma v. Covidien Holding, Inc.*, No. 12 Civ. 2161, 2014 WL 360196, at *5 (C.D. Cal. Jan.
 31, 2014))); *In re Heritage Bond Litig.*, No. 02 ML 1475, 2005 WL 1594403, at *19 (C.D. Cal.
 June 10, 2005) (calling a recovery of 36% of the total net loss an “exceptional result”).

1 Plaintiffs also obtained the *maximum* degree of programmatic relief that Class Members
 2 could possibly obtain. Wells Fargo has agreed to extend unsecured credit to current and valid
 3 DACA recipients on the same terms and conditions as U.S. citizens. In other words, Wells Fargo
 4 will *not* consider DACA as a factor in evaluating credit risk or in underwriting, which might
 5 invariably lead to inferior credit terms. All DACA recipients nationwide—not just Class
 6 Members—will benefit from this programmatic relief. DACA recipients have a great need for
 7 access to credit and have encountered significant difficulty in obtaining it.²¹ As one of the largest
 8 lenders in the country, the programmatic relief offered by Wells Fargo is a significant benefit to
 9 Class Members (and DACA recipients nationwide) and is likely better than what could be
 10 obtained by protracted litigation and trial.

11 3. The Extent of Discovery Supports Settlement.

12 A settlement requires adequate discovery. The touchstone of the analysis is whether “the
 13 parties have sufficient information to make an informed decision about settlement,” including
 14 formal and informal discovery. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir.
 15 2000) (quoting *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1239 (9th Cir. 1998)). Here,
 16 Plaintiffs have litigated these claims zealously for more than three years, conducting robust
 17 formal discovery along the way. Specifically, Plaintiffs obtained nearly 60,000 pages of
 18 discovery from Wells Fargo, consisting of emails, lending and underwriting policy and procedure
 19 documents, and documents relating to exceptions and complaints filed by applicants. Miazad
 20 Decl. ¶¶ 13-14. Class Counsel deposed nine fact and expert witnesses and also worked closely
 21 with three experts to analyze various issues implicated in the case, including underwriting and
 22 immigration. *Id.* ¶¶ 16-17. Wells Fargo deposed all six Plaintiffs and Plaintiffs’ three experts,
 23 and sought extensive written discovery from Plaintiffs, including extensive documentation about
 24

25 ²¹ More than 800,000 individuals have been approved under DACA in the United States.
 26 U.S. Citizenship & Immigration Servs., *Approximate Active DACA Recipients: Country of Birth*
 27 *As of February 28, 2019* at 5,
 28 https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/2_Approximate_Active_DACA_Recipients_Demographics_-_Feb_28_2019.pdf.

1 their credit history and attempts to mitigate their denial of credit with Wells Fargo. *Id.* ¶¶ 14-17.
 2 While the parties were negotiating the settlement agreement in this matter, Wells Fargo produced
 3 its home mortgage policy and the parties met and conferred regarding the details of the policy,
 4 concluding it was appropriate to include in the settlement. *Id.* ¶ 26. Thus, the Settlement results
 5 from Class Counsel’s informed judgment about the strengths and weaknesses of the claims.

6 **4. Counsel’s Experience and Views Support Approval.**

7 “Great weight is accorded to the recommendation of counsel, who are most closely
 8 acquainted with the facts of the underlying litigation.” *DIRECTV, Inc.*, 221 F.R.D. at 528
 9 (quoting *In re Painewebber Ltd. P’ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1997)). “[P]arties
 10 represented by competent counsel are better positioned than courts to produce a settlement that
 11 fairly reflects each party’s expected outcome in litigation[.]” *Rodriguez*, 563 F.3d at 967.

12 Class Counsel are some of the most experienced class action litigators in the country.
 13 Miazad Decl. ¶¶ 4-9; Helzer Decl. ¶¶ 5-9. Class Counsel specialize in prosecuting complex
 14 employment and civil rights class actions, and over many years have successfully—and
 15 unsuccessfully—litigated many such cases, putting them in a strong position to weigh the
 16 strengths and weaknesses of Plaintiffs’ claims and Wells Fargo’s defenses. *Id.*; *see also* Ex. B
 17 (listing comparable past distributions). Based on their extensive experience, Class Counsel
 18 believe that the Settlement is fair, reasonable, and adequate.

19 **5. The Parties Participated in Arms-Length Negotiations Before an 20 Experienced Neutral Mediator.**

21 A settlement reached “in good faith after a well-informed arms-length negotiation” is
 22 presumed to be fair. *Fernandez v. Victoria Secret Stores, LLC*, No. 06 Civ. 04149, 2008 WL
 23 8150856, at *4 (C.D. Cal. July 21, 2008).²² Here, the settlement easily meets the rigorous
 24 scrutiny required in this District and by *Roes*, 1–2, for both substantive and procedural reasons.
 25 First, the Settlement is substantively strong, providing excellent monetary relief and robust
 26 programmatic relief. Second, the Settlement is procedurally sound, (a) having been reached after

27 ²² *See also Wren v. RGIS Inventory Specialists*, No. 06 Civ. 05778, 2011 WL 1230826, at *6
 28 (N.D. Cal. Apr. 1, 2011); *Tijero v. Aaron Bros., Inc.*, 301 F.R.D. 314, 325 (N.D. Cal. 2013)
 (private mediation “support[s] the conclusion that the settlement process was not collusive”).

1 extensive, hard-fought adversarial litigation, with extensive discovery and motion practice, (b)
 2 with no parallel litigation that could give rise to reverse auction concerns, and (c) after three
 3 separate mediation sessions over the course of a year and a half, overseen by a highly experienced
 4 mediator with particular expertise in complex class actions. Miazad Decl. ¶¶ 10-27; 41.

5 **C. The Proposed Notice Is Clear and Adequate.**

6 The proposed Notice is the “best notice that is practicable under the circumstances.” Fed.
 7 R. Civ. P. 23(c)(2)(B), and is “reasonable,” Fed. R. Civ. P. 23(e)(1). The Notice and Claim Form
 8 are consistent with Northern District of California’s Procedural Guidance for Class Action
 9 Settlements and modern best practices set forth by the Federal Judicial Center.²³ The Notice and
 10 Claim Form are easily understandable and include: (1) contact information for Class Counsel to
 11 answer questions; (2) the address for a website maintained by the Settlement Administrator that
 12 will link to important documents in the case; and (3) instructions on how to access the case docket
 13 via PACER or in person at any of the Court’s locations. The Notice will state the date of the final
 14 approval hearing, that the date may change without further notice to the Class, and that Class
 15 Members should check the settlement website or the Court’s PACER site to confirm that the date
 16 has not been changed. The Notice explains the deadlines for objecting, opting out, and
 17 submitting a Claim Form. SA Ex. 1.

18 The Claim Form is clear, user-friendly, and focused on a few key relevant facts to which
 19 Class Members have ready access. The Claim Form is helpfully pre-printed with individualized
 20 information in customized paper copies. It will also be available online, so that Class Members
 21 can submit Claim Forms via a secure online submission form. In addition, Class Counsel will
 22 assist the Settlement Administrator in responding to Class Member questions, helping them file
 23 Claim Forms and navigate the process generally.

24
 25
 26
 27 ²³ See *Illustrative Forms of Class Action Notices: Overview*, Fed. Judicial Ctr.,
 28 <https://www.fjc.gov/content/301253/illustrative-forms-class-action-notices-introduction> (last
 visited June 16, 2020).

V. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED.

Plaintiffs, in consultation with Wells Fargo, propose the following schedule for finalizing and implementing the Settlement:

Event	Proposed Date
Preliminary Approval Hearing	July 10, 2020
Court enters Preliminary Approval Order*	July 24, 2020
WF provides class list data to Settlement Administrator	August 7, 2020
Settlement Administrator disseminates Notice	August 28, 2020
Settlement Administrator sends Reminder notices	September 25, 2020
Deadline for Class Members to file Claim Forms, opt out, and/or object	October 12, 2020
Plaintiffs file Fee and Incentive Award Motions	October 23, 2020
Deadline for Class Members to file Claim Forms	October 27, 2020
WF deadline to terminate settlement	November 12, 2020
Plaintiffs file Final Approval motion	November 13, 2020
Final Approval Hearing	December 4, 2020
Final Approval Order*	December 18, 2020
Effective Date (assuming no appeals)*	January 22, 2021
WF funds Settlement	April 12, 2021
Settlement Administrator mails checks to Class	April 17, 2021

* Assumed date for purposes of calculating subsequent dates.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court: (1) certify, for settlement purposes only, settlement classes pursuant to Federal Rule 23(a) and 23(b)(3); (2) grant preliminary approval of the Settlement; (3) appoint Plaintiffs Rodas, Villafuerte, Vedoy, and Acosta as the Class Representatives, their counsel as Class Counsel, and JND as Settlement Administrator; (4) approve mailing to the Class Members the proposed Notice; and (5) schedule a hearing for final approval of the Settlement.

1 Dated: June 16, 2020

Respectfully submitted,

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